

**EXHIBIT E**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

NAFTA GENERAL AGENCY, INC.

Plaintiff,

vs.

AMERICAN SERVICE INSURANCE  
And AVALON RISK MANAGEMENT

Defendants.

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CIVIL ACTION NO. \_\_\_\_\_

**DEFENDANTS' NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Defendants American Service Insurance ("ASI") and Avalon Risk Management ("Avalon"), and file this Notice of Removal and state:

**I. STATE PROCEEDING**

An action was commenced against Defendants in the 197<sup>th</sup> Judicial District Court, Cameron County, Texas, on January 14, 2008. The action is styled NAFTA General Agency, Inc. v. *American Service Insurance and Avalon Risk Management*, Cause No. 2008-01-0188-C. Plaintiff asserted causes of action for breach of contract and fraud based upon an insurance Program Manager Agreement between the parties.

Plaintiff demanded a trial by jury.

**II. TIMELINESS**

Defendant ASI and Avalon were served certified mail on January 15, 2008.

This Notice of Removal is being filed within thirty (30) days after the receipt by Defendants of the Plaintiff's Original Petition and is timely filed.

### **III. DIVERSITY JURISDICTION**

This case is removable based upon diversity jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff is a resident of Texas, while both Defendants are residents of Illinois. Both Defendants are incorporated in Illinois and have their principal place of business in Illinois. Neither Defendant is a resident of Texas. Plaintiff's allegations in the state court pleadings that ASI is a Canadian corporation and Avalon is a Texas corporation are false. Moreover, Defendant Avalon has had no involvement in the facts made the basis of this lawsuit and has no connection to any of Plaintiff's claims. Plaintiff's false allegations constitute fraudulent or improper joinder for the purpose of unlawfully attempting to defeat diversity and should be disregarded.

The amount in controversy exceeds \$75,000.00.

This case is removable pursuant to 28 U.S.C. §§ 1441 and 1446.

### **IV. VENUE**

Removal venue is appropriate because the Brownsville Division of the Southern District of Texas embraces the place where the state court action is pending, namely, Cameron County.

### **V. STATE COURT NOTICE & PLEADINGS**

Contemporaneous with the filing of this Notice of Removal, Defendants have given the 197<sup>th</sup> Judicial District Court, Cameron County, Texas, written notice of the same, a copy of which is attached hereto.

A copy of all state court docket sheets, process, pleadings and orders served in this action are attached hereto as Exhibit "A" and are incorporated herein, including the following:

1. Original Petition for Intervention and for Declaratory Judgment, Petition for Damages, and petition for Injunctive Relief;
2. Temporary Restraining Order & Order Setting Hearing for Preliminary Injunction;
3. Certificate of Cash in Lieu of Bond;
4. Citation served on American Service Insurance;

5. Citation served on Avalon Risk Management;
6. Defendants' Motion to Quash Service, Motion to Dismiss, or alternatively, Plea in Abatement, Motion to Compel Arbitration, Response to Request for Temporary Injunction, Motion to Dissolve Temporary Restraining Order, and Opposition to Motion to Extend TRO or Continue Hearing;
7. Notice of Removal (State)

Also, attached hereto and incorporated herein by reference as Exhibits "B" and "C" respectively are the following information required by local rule LR 81: a list of all parties and attorneys; an index of matters being filed with the court.

WHEREFORE, Defendants respectfully remove this action to this Court.

Respectfully submitted,

By: /s/ Michael K. Hurst  
Michael K. Hurst, Lead Counsel

MICHAEL K. HURST, Lead Counsel  
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**GRUBER HURST JOHANSEN & HAIL LLP**  
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And

STEVEN M. GONZALEZ  
State Bar No. 09131900  
**GONZALEZ PALACIOS, LLP**  
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McAllen, Texas 78503  
Telephone (956) 618-0115  
Facsimile (956) 618-0445

**ATTORNEYS FOR AMERICAN SERVICE  
INSURANCE AND AVALON RISK  
MANAGEMENT**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document was provided to all counsel of record as indicated below via certified mail, return receipt requested on this 25<sup>th</sup> day of January, 2008:

**VIA FACSIMILE**

Anthony P. Troiani  
Anthony P. Troiani, P.C.  
700 Paredes Avenue, Ste 107  
Brownsville, TX 78521  
Telephone: 956-541-4235  
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\_\_\_\_\_  
/s Vanessa J. Rush  
Vanessa J. Rush

**EXHIBIT F**

**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Brownsville)  
CIVIL DOCKET FOR CASE #: 1:08-cv-00034**

NAFTA General Agency, Inc. v. American Service  
Insurance et al  
Assigned to: Judge Hilda G Tagle  
Demand: \$-1,539,607,552  
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 01/25/2008  
Jury Demand: Plaintiff  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

**Plaintiff**

**NAFTA General Agency, Inc.**

represented by **Anthony P Troiani**  
Attorney at Law  
700 Paredes  
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Brownsville, TX 78521  
956-541-4235  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Ignacio Torteya, III**  
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956-550-8373  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**American Service Insurance**

represented by **Michael K Hurst**  
Gruber Hurst et al  
1445 Ross Avenue  
2500 Fountain Pl  
Dallas, Tx 75202  
214-855-6800  
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**Steven Matthew Gonzalez**  
Gonzalez Gaytan et al  
1317 E Quebec Ave

McAllen, TX 78501  
 956-618-0115  
 Fax: 956-618-0445 fax  
**ATTORNEY TO BE NOTICED**

**Vanessa Jean Rush**  
 Gruber Hurst Johansen and Hall  
 1445 Ross Avenue  
 Suite 4800  
 Dallas, TX 75202  
 214-855-6800  
 Fax: 214-855-6808  
 Email: vrush@ghjhlaw.com  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Avalon Risk Management**

represented by **Michael K Hurst**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Steven Matthew Gonzalez**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Vanessa Jean Rush**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
01/25/2008	<u>1</u>	NOTICE OF REMOVAL from 197th Judicial District Court, Cameron County, TX, case number 2008-01-0188-C (Filing fee \$ 350 receipt number 3418159) filed by American Service Insurance, Avalon Risk Management. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit A Part 1-1# <u>3</u> Exhibit A Part 2# <u>4</u> Exhibit A Part 3# <u>5</u> Exhibit A Part 3-1# <u>6</u> Exhibit A Part 4# <u>7</u> Exhibit A Part 5# <u>8</u> Exhibit A Part 6# <u>9</u> Exhibit B# <u>10</u> Exhibit C)(Hurst, Michael) (Entered: 01/25/2008)
01/28/2008	<u>2</u>	ORDER. Pursuant to Federal Rule of Civil Procedure 26(f), counsel shall conduct a discovery conference, and submit in one filing with the United States District Clerk a joint discovery/case management plan that includes a proposed scheduling order no later than April 24, 2008. ( Signed by Judge Hilda G Tagle ) Parties notified.(dahumada, ) (Entered: 01/28/2008)
01/28/2008		***Set/Reset Deadlines/Hearings: Joint Discovery/Case Management Plan due by 4/24/2008 (dahumada, ) (Entered: 01/28/2008)



<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
01/30/2008 08:33:48			
<b>PACER Login:</b>	fp0009	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:08-cv-00034
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

**EXHIBIT G**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

AMERICAN SERVICE INSURANCE )  
COMPANY, an Illinois insurance company, )

Plaintiff, )

v. )

NAFTA GENERAL AGENCY, a Texas, )  
Corporation, UNDERWRITERS MGA, Inc., )  
a Texas corporation, and RAMON VILLARREAL, )  
an individual, )

Defendants. )

Case No. 08 C 443

Hon. David Coar

PROPOSED TEMPORARY RESTRAINING ORDER

This Matter coming to be heard pursuant to the Motion for a Temporary Restraining Order of the Plaintiff, American Service Insurance Company pursuant to Rule 65 of the Federal Rules of Civil Procedure, all parties having been notified and having been given the opportunity to be heard, the Court having been apprised of the premises, the Court having read Plaintiff's Motion for a Temporary Restraining Order, having reviewed the caselaw and authority cited therein and having heard argument of counsel,

The Court Finds:

1. The Court has jurisdiction over the subject matter and parties involved in this action;
2. The Plaintiff is likely to succeed on the merits of its declaratory judgment, breach of contract, breach of fiduciary duty and conversion claims;

3. The Plaintiff is suffering an imminent threat of irreparable harm to its good will and its reputation from the Defendants' ongoing sales and marketing of insurance, and Defendants' withholding of policies and materials bearing the Plaintiff's name as well as the imminent threat that the Defendants will dissipate Plaintiff's assets;

4. There is not an adequate remedy at law because a legal remedy will not prevent the Defendants from continuing to hold themselves out as representing the Plaintiff in selling and serving insurance policies or from instituting new legal actions addressing the parties' Plaintiff's termination of the Agreement;

5. The balancing of harms favors the Plaintiff since the Plaintiff faces an imminent threat of serious injury while the Defendants are not entitled to protection for their unauthorized conduct; and

6. There is a public interest in preventing the Defendants from disseminating unauthorized insurance policies and documents.

IT IS THEREFORE HEREBY ADJUDGED, ORDERED AND DECREED AS FOLLOWS:

1. The Defendants, NAFTA General Agency, Underwriters MGA, Inc., and Ramon Villareal, and any of their officers, agents, servants, employees, attorneys, or any person or entity acting in concert with or participating with any of the foregoing are hereby immediately enjoined, restrained and prohibited from soliciting, selling or renewing any American Service Insurance Company insurance policies, or directly or indirectly holding themselves out as representatives or authorized agents for American Service Insurance Company.

2. The Defendants, NAFTA General Agency, Underwriters MGA, Inc., and Ramon Villareal and any of their officers, agents, servants, employees, attorneys, or any person or entity

acting in concert with or participating with any of the foregoing are hereby immediately enjoined, restrained and prohibited from filing or instituting any new legal proceedings or action in any court or other forum concerning the parties' rights and remedies stemming from the Program Manager Agreement entered into between and among American Service Insurance Company and NAFTA General Agency, Underwriters MGA, Inc. and Ramon Villarreal;

3. The Defendants, NAFTA General Agency, Underwriters MGA, Inc., and Ramon Villarreal, and any of their officers, agents, servants, employees, attorneys, or any person or entity acting in concert with or participating with any of the foregoing are hereby ordered to immediately deliver to the Plaintiff any records pertaining to business or transactions conducted under the Program Manager Agreement entered into between and among American Service Insurance Company and NAFTA General Agency, Underwriters MGA, Inc. and Ramon Villarreal, any business or transactions conducted as an actual or purported representative or agent of American Service Insurance Company, or which otherwise pertain to any American Service Insurance policy.

4. The Defendants, NAFTA General Agency, Underwriters MGA, Inc., and Ramon Villarreal, and any of their officers, agents, servants, employees, attorneys, or any person or entity acting in concert with or participating with any of the foregoing are hereby ordered to immediately transfer to the Plaintiff any and all monies obtained from the sale of American Service Insurance Company policies to the present that have not previously been forwarded to the Plaintiff, which monies are American Service Insurance Company property.

Dated: \_\_\_\_\_

1/22/08

ENTER: \_\_\_\_\_

David H. Chin  
United States District Court Judge

Patrick M. Hincks  
Desmond Patrick Curran  
Matthew P. Barrette  
Sullivan Hincks & Conway  
120 W. 22<sup>nd</sup> Street, Suite 100  
Oak Brook, IL 60523